

HOUSE No. 794

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty for legislation to improve the accuracy of criminal convictions. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO IMPROVE THE ACCURACY OF CRIMINAL CONVICTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 263 of the Massachusetts General Laws, as most
2 recently appearing in the 1998 Official Edition is hereby amended
3 by inserting after Section 1A, the following new section:—

4 Section 1B.

5 (a) As used in this statute:

6 (1) “electronic recording” means a complete and authentic elec-
7 tronic recording created by motion picture, videotape, audiotape,
8 or digital media;

9 (2) “custodial interrogation” means interrogation conducted in
10 a police station, courthouse, correctional facility, community cor-
11 rectional center, detention facility, or other structured environment
12 where adequate recording equipment is readily available.

13 (b) An oral, written, or sign language statement of a suspect
14 made during a custodial interrogation shall be presumed inadmis-
15 sible as evidence against a suspect in a criminal proceeding
16 unless:

17 (1) the interrogation is electronically recorded in its entirety;

18 (2) the suspect has been made aware of the recording;

19 (3) prior to the statement, but during the recording, the accused
20 is given the requisite Miranda warnings and the accused know-
21 ingly, intelligently, and voluntarily waives any rights set out in the
22 warning;

23 (4) the recording device was capable of making an accurate
24 recording, the operator was competent, and the recording has not
25 been altered;

26 (4) identification is made on the recording of all persons whose
27 voices are recorded and whose words are material to the custodial
28 interrogation; and,

29 (5) not later than the twentieth (20th) day before the date of the
30 proceeding, the attorney representing the defendant is provided
31 with a true, complete, and accurate copy of all recordings made
32 under this statute.

33 (c) The State may rebut the presumption of inadmissibility
34 through clear and convincing evidence that:

35 (1) the statement was both voluntary and reliable; and,

36 (2) law enforcement officers had “good cause” not to tape the
37 entire interrogation. Examples of “good cause” include:

38 (i) that the interrogation took place in a location not identified
39 by the statute and where the requisite recording equipment was
40 not readily available;

41 (ii) that the accused refused to have his/her interrogation elec-
42 tronically recorded, and the refusal itself was electronically
43 recorded; or

44 (iii) that failure to electronically record an entire interrogation
45 was the result of equipment failure and obtaining replacement
46 equipment was not feasible.

47 (d) Notwithstanding any other provision of this statute, a
48 written, oral or sign language statement of the defendant made as
49 a result of a custodial interrogation is admissible against the
50 defendant in a criminal proceeding in this state if:

51 (1) the statement was obtained in another state and was
52 obtained in compliance with the laws of that state or this state; or

53 (2) the statement was obtained by a federal law enforcement
54 officer in this state or another state and was obtained in compli-
55 ance with the laws of the United States;

56 (e) Every electronic recording made of a custodial interrogation
57 must be preserved until such time as the defendant’s conviction
58 for any offense relating to the interrogation is final and all direct
59 appeals and habeas corpus proceedings are exhausted, or the pros-
60 ecution of such offenses is barred by law.

61 (f) Nothing in this statute precludes the admission of a state-
62 ment made by the accused at his/her trial, another hearing which
63 was conducted in open court, or before a grand jury, or a state-
64 ment of the accused which constitutes the *res gestae* of the arrest
65 or the offense.